

**U.S. Department of Justice****Federal Bureau of Investigation**

Washington, D.C. 20535

June 3, 1988

NAPA
Suite 540
1120 G Street, Northwest
Washington, D. C. 20005

Attention: Mr. Frank Yeager

Dear Frank:

Pursuant to your request for data in the agency "uniqueness" area, the FBI previously provided a great deal of data and oral history which was used in the preparation of the Preliminary Paper for National Academy of Public Administration on RFP 88-A109, Part I. Beginning with page 5 of this paper there is a lengthy explanation of our excepted service status.

Briefly, Executive Order 8768 dated June 3, 1941, signed by then President Roosevelt placed all positions in the FBI in the excepted service. In addition to the Executive Order, Title 28, United States Code, Section 536 (Attachment A) also specifies that all positions in the FBI are excepted from the Competitive Service. There have been periods prior to 1941 when certain support-type positions, such as fingerprint classifiers and some clerical personnel, were not in the excepted service.

The rationale for placing all FBI positions in the excepted service is based upon the nature of the Bureau's responsibilities and attendant personnel requirements which could not be efficiently and effectively met in the competitive service. The sensitive nature of the Bureau's mission and the imperative necessity that the impact of the results achieved be at the optimum level are such that the impact of the results achieved be at the optimum level are such that we must ensure those selected for employment meet the very high standards we have set as an agency in the excepted service particularly in the areas of performance, character, loyalty, reputation and associations. Further, we know that the FBI is a primary penetration target of hostile intelligence services.

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Accordingly, the FBI should retain the complete authority and flexibility to organize and operate its selection process. In order to ensure the continuation of performance required to properly discharge its responsibilities, it is imperative that the FBI be continued in the excepted service. It is observed that agencies in the excepted service come under scrutiny of the Office of Personnel Management in many program areas. It is our experience, however, that in the areas of recruitment promotion and discipline the Director of the FBI must have authority to set those requirements which are necessary to the continuation of the most effective and efficient operation of this Bureau.

Further, Code of Federal Regulations, Title 28, Chapter 1, Subpart x 0.137, which delegates authority to the Director of the FBI by the Attorney General, states that, with the exception of the positions of Assistant Director and above, the Director of the FBI is authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employees, direction and general administration (including appointments, assignments, training, promotion, demotion, compensatory leave, classification and separation) of personnel, including personnel in wage board positions in the FBI.

For your possible assistance and information, I have attached a copy of the paper, "Historical Review of the FBI's Status" (Attachment B).

* Overall, the FBI's uniqueness as an investigative agency continues to prevail and become increasingly more significant in order to effectively combat ingenious methods of illegal activities especially in the areas of foreign counterintelligence, terrorism, drugs, and organized criminal enterprises. One important area of the FBI's uniqueness and the critical nature of our mission is underscored by our longstanding policy that no Special Agent may be a member of the Ready Reserves, noting that many of our employees are veterans. This policy is based on the extreme necessity for the FBI to maintain its unique personnel resources, whose value in time of national emergency or war would become even more critical to this organization's mission success. Thus, if our Special Agent personnel were subject to military activation or recall, it would create an untenable position.

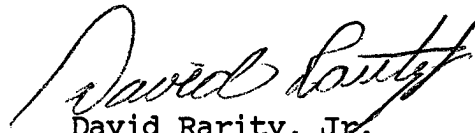
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As you know, the FBI requests on occasion to be exempt or excluded from various program areas due to the uniqueness of our responsibilities. In some of these cases, we opt to develop our own programs to more appropriately meet our agency needs and still conform to various governmental guidelines. For instance, the FBI originally sought relief from inclusion into the Senior Executive Service (SES) due, in part, to our view that an interagency exchange of executives would result in a critical loss of institutional knowledge and experience and dilute our ability to effectively respond to highly complex, fast moving situations. Within the last couple of weeks, legislation was enacted into law which was proposed by the Department of Justice (DOJ), after approval by the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM), which provides for an SES which meets the needs for the FBI and DEA.

Generally, the FBI, as cited in Attachment B, has been exempt from some authorities, albeit usually subject to overview by DOJ and OPM; however, to specifically track over 30 years of legislative history would be a monumental task in view of current budgetary constraints and manpower limitations. I do believe that ample information has been provided to reflect our continued and even increased need for flexibility. Another prime example, of which NAPA is well aware, is our current effort to increase the compensation package to the employees in our New York Office. Flexibility is a key ingredient if we are to be competitive in the future, not only in the marketplace, but even among the other intelligence agencies. Oftentimes the FBI must try to compete for the same scarce pool of resources as other intelligence community agencies but without benefit of some of their broader legislative flexibility, thus placing our agency at a relative disadvantage.

I trust this information is responsive to your needs.

Sincerely,


David Rarity, Jr.
Personnel Officer

Enclosures (2)